STATE OF MICHIGAN

COURT OF APPEALS

DWIGHT BLOSS and DAWN BLOSS,

Plaintiffs-Appellants,

v

SUN COMMUNITIES OPERATING LIMITED PARTNERSHIP, d/b/a/ WHITE LAKE MOBILE HOME VILLAGE,

Defendant-Appellee.

UNPUBLISHED
April 20, 2006

No. 266602
Oakland Circuit Court
LC No. 2005-063884-NO

Before: Murphy, P.J., and O'Connell and Murray, JJ.

PER CURIAM.

In this slip and fall case, plaintiffs appeal as of right from the circuit court's order granting summary disposition to defendant. We affirm. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

Defendant owns and operates the White Lake Mobile Home Village. Plaintiff[1] was injured just after daybreak, on December 27, 2002, in the course of his work as a driver for the trash collecting company that served the community. According to plaintiff, he left the truck to assist a coworker, took a few steps, then slipped and fell on some "black ice"[2] on the roadway. At his deposition, plaintiff described a patch of ice about six feet by four feet, but otherwise described road conditions as clear. Plaintiff stated that he did not see the ice as he approached it, but admitted that he could see the ice when he stood up after falling.

Plaintiffs' meteorologist reported that the precipitation most immediately preceding plaintiff's fall consisted of three and one-half inches of snow which fell on December 25, 2002. Temperatures were below freezing that day, but briefly rose just to the freezing point the day after, which, along with some sunshine, allowed some snow to melt, which then refroze by 6:00

[1] Because plaintiff Dawn Bloss's interest in this case is derivative of that of plaintiff Dwight Bloss, for purposes of this opinion, the singular "plaintiff" will refer exclusively to the latter.

[2] Plaintiff's meteorologist described "black ice" as "a very thin layer of ice that is extremely difficult to detect upon casual visual inspection."

p.m. Defendant's snow-removal contractor reported that she had plowed and salted the streets of defendant's mobile home park on December 25.

Plaintiffs filed suit, asserting that defendant negligently allowed "an unnatural excessive accumulation of black ice" to form, thereby failing to keep the premises in reasonable repair as required by MCL 554.139(1). Defendant moved for summary disposition. In granting the motion, the trial court reasoned as follows:

> The plaintiff testified that he did not slip on the roadway prior to this incident, nor did his partner slip prior to plaintiff falling.
>
> The evidence establishes that maintenance was performed when there was snowfall two days prior, and that salt was spread on December 25, '02. Additionally, plaintiff testified that the road conditions were clear. The plaintiff's only basis for asserting notice was the fluctuation of temperature.
>
> The Court finds that defendants were not on notice of the condition. . . .
>
> Further, this Court finds that MCL 554.139 is not applicable as the condition at issue was in a common area, not on a premise [sic]. The open and obvious defense is therefore applicable, and . . . the condition was not unreasonably dangerous.

We review a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

Regardless whether a licensee or an invitee is involved, the liability of a possessor of land arises only where the possessor knows or should have known of or discovered the hazard that caused physical harm to the plaintiff. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597; 614 NW2d 88 (2000). Assuming that plaintiff was an invitee entitled to the highest level of protection under the law, an invitor is liable for an injury resulting from an unsafe condition where known to the invitor, or where the condition is of such a character or has existed a sufficient length of time that the invitor should have had knowledge of the hazard. *Hampton v Waste Mgt of Michigan, Inc.*, 236 Mich App 598, 604; 601 NW2d 172 (1999). The question in this case is whether a material question of fact exists concerning whether defendant should have known about the patch of ice upon which plaintiff allegedly slipped.

The trial court's main basis for granting defendant summary disposition was that the evidence could not show that defendant had sufficient notice of the condition that allegedly caused plaintiff to fall such that there arose a duty to mitigate it.

Plaintiffs' meteorologist's data and theory concerning precipitation and temperatures stands as plaintiffs' sole basis for asserting that defendant was obliged to discover and alleviate the icy condition. We decline, under the specific circumstances of this case, to impose a duty on

defendant to inspect for ice in response to the fluctuations in temperature above and below the freezing point, without any other indicia of the existence of a potentially hazardous condition.

We conclude that the evidence suggests only that plaintiff was the victim not of defendant's negligence, but of a combination of innocent circumstances, which brought a patch of ice into existence, where none would normally be expected. Defendant's duty to inspect did not extend to checking the roadways for ice through the night and early morning during a period that was without precipitation, simply because some hours earlier the temperature shifted from just at, to again below, freezing. Accordingly, the trial court correctly held that the evidence did not show that defendant had sufficient notice of the hazardous condition to trigger a duty to diminish that hazard. In light of our resolution of this case, additional appellate issues need not be addressed.

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Christopher M. Murray